

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2004/004928

International filing date (day/month/year)
18.02.2004

Priority date (day/month/year)

International Patent Classification (IPC) or both national classification and IPC
H04N7/173

Applicant
THOMSON LICENSING S.A.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

| | |
|----------|--------------------------|
| Event | Written Opinion Response |
| Deadline | 17 Feb. 2005 |
| Entered | on 24 Nov. 2005 |

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/004928

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/004928

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|--------------------------|
| Novelty (N) | Yes: Claims | 3,4,8,13,14,23,24,32,33 |
| | No: Claims | 1,2,5-7,9-12,15-22,25-31 |
| Inventive step (IS) | Yes: Claims | |
| | No: Claims | 1-33 |
| Industrial applicability (IA) | Yes: Claims | 1-33 |
| | No: Claims | |

2. Citations and explanations

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

PCT/US2004/004928

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Citation of documents

1. The following documents are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: US 2002/059626 A1 (LEMMONS THOMAS) 16 May 2002 (2002-05-16)

D2: WO 02/19717 A (PETROSKE JOHN; ZHOU TERRY; DRAKE EDDIE ;
LONG XIPING (US); MYRIO CORP) 7 March 2002 (2002-03-07)

Novelty

2. The present application does not meet the requirements of **Article 33(1) PCT**, because the subject-matter of claims **1, 2, 5-7, 9-12, 15-22 and 25-31** is not new in the sense of **Article 33(2) PCT**.
- 2.1 Document D1, which is considered to represent the most relevant state of the art, discloses:
a method for use in an upstream endpoint of a video distribution system, the method comprising:
receiving tuning data from at-least-one endpoint of the video distribution system, the tuning data representing programming that is currently being viewed at the at-least-one endpoint (see D1, paragraph 31 and claim 10); and
adjusting programming to replace content as a function of the received tuning data (see D1, paragraph 32).

The subject-matter of claim 1 is therefore not new over the disclosure of D1, Article 33(2) PCT.

- 2.2 D1 also discloses a method for use in an endpoint of a video distribution system, the method comprising (see D1, paragraph 31):
determining programming that is currently being viewed; and
sending tuning data representing the currently viewed programming to an upstream distribution point.

The subject-matter of claim 10 is therefore not new over the disclosure of D1, Article 33(2) PCT.

- 2.3 D1 also discloses a method for use in an endpoint of a video distribution system, the method comprising:
receiving a channel selection from a user (see D1, paragraph 31);
determining if the selected channel is associated with replaced programming (see D1, paragraph 34); and
if the selected channel is associated with replaced programming, providing filler content to the user instead of the replaced programming (see D1, paragraph 34).

It is here pointed out to the applicant that the term "filler content" is vague and could refer to a low bit rate video of the replaced content as mentioned in the description of the application, see paragraph 31, lines 28 to 30.

The subject-matter of claim 16 is therefore not new over the disclosure of D1, Article 33(2) PCT.

- 2.4 Furthermore D1 discloses a method for providing a video broadcast service to a number of users, comprising (see D1, paragraph 32):
identifying at least one program channel as a replaceable program channel; and
providing the replaceable program channel to the number of users, wherein the replaceable program channel may at times be replaced by content from another program channel as a function of the number of users that select the replaceable program channel.

The subject-matter of claim 17 is therefore not new over the disclosure of D1, Article 33(2) PCT.

- 2.5 Moreover D1 discloses an apparatus for use in an upstream distribution point of a multi-media communications system, the apparatus comprising (see D1, paragraphs 31 and 32):
a receiver for receiving tuning data from at least one downstream endpoint of the multi-media communications system; and
a processor operative on the received tuning data for replacing content of a program channel that is not being viewed with new content.

The subject-matter of claim 19 is therefore not new over the disclosure of D1, Article 33(2) PCT.

- 2.6 Furthermore D1 discloses an apparatus for use in an endpoint of a video distribution system, the apparatus comprising:
a communications interface for coupling to a communications channel (see D1, paragraph 28); and
a processor for determining programming that is currently being viewed, and for sending tuning data representing the currently viewed programming via the communications interface for transmission over the communications channel to an upstream distribution point (see D1, paragraph 38).

The subject-matter of claim 26 is therefore not new over the disclosure of D1, Article 33(2) PCT.

- 2.7 Dependent claims 2, 5-7, 9, 11, 12, 15, 18, 20-22, 25 and 27-31 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty (Article 33(2) PCT).
3. Claims 3, 4, 8, 13, 14, 23, 24, 32 and 33 are not known from the available prior art, see also paragraph 4.

Inventive Step

4. The present application does not meet the requirements of **Article 33(1) PCT**, because the subject-matter of claim **3, 4, 8, 13, 14, 23, 24, 32 and 33** does not involve an inventive step in the sense of **Article 33(3) PCT**.
- 4.1 As previously described in paragraph 2, document D1 discloses a receiver providing messages containing tuning data to an upstream endpoint. However D1 does not explicitly disclose the protocol used to transmit these messages.

To solve the problem of providing messages containing tuning data, the skill person would realize that the method and system of document D2, describing a real-time audiende monitoring system using an IGMP signaling for providing tuning data from receivers to an upstream end point, provide an effective method and an effective system to provide these tuning data.

Therefore, the skilled person would include the corresponding features of D2 into the apparatus described in D1 thus arriving at the subject-matter of claims 3, 13, 23 and 32.

Therefore the subject-matter of claims 3, 13, 23 and 32 does not involve an inventive step over the disclosure of D1 combined with that of D2, Article 33(3) PCT.

- 4.2 Moreover D1 discloses the representation of programming with downstream frequency information and packet identifier information (see D1, paragraph 29). It would be thus obvious to the skill person to include a packet comprising these information into a modified form of IGMP signaling in order to identify the programming that is currently being viewed.

Thus the subject-matter of claims 4, 14, 24 and 33 does not involve an inventive step over the disclosure of D1 combined with that of D2, Article 33(3) PCT.

- 4.3 Furthermore D1 discloses an indicator indicating that paid advertising is being shown and being used to restore the replaced programming (see D1, paragraphs 34 and 36). It would be obvious for the skill person to add a step of checking this indicator before replacing the programming, thereby providing a step of checking if the at-least-one program that is not being viewed is available for replacement before performing the replacing step.

Thus the subject-matter of claim 8 does not involve an inventive step over the disclosure of D1, Article 33(3) PCT.